

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CASE NO.: 1:19-cv-01044

APL MICROSCOPIC, LLC,

Plaintiff,

v.

GREENE TECHNOLOGIES, LLC,

Defendant.

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff APL MICROSCOPIC, LLC by and through its undersigned counsel, brings this Complaint against Defendant GREENE TECHNOLOGIES, LLC for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff APL MICROSCOPIC, LLC (“APL”), brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute APL's original copyrighted works of authorship.

2. Our client's principal is an experienced professional photographer who makes a living from photography. APL's principal is Andrew Paul Leonard (“Leonard”). Leonard is a highly skilled and experienced creator of microscopic photography. Currently, Leonard's “cameras” include field emission scanning electron microscopes, and the recently discovered Carl Zeiss SMT, Orion Helium ion-beam scanner. Using a scientist's tool and “eye” to capture the splendor of a minuscule world beyond the normal range of human vision, Leonard has

documented cells and cellular bodies with high contrast experimental imagery and special optical effects to illustrate an infinitesimally small stage where color and light come together to create a commercial product unlike any available in the commercial photography market today.

3. Leonard's images, which are assigned to APL, are highly desirable, particularly in the medical, pharmaceutical, and biological research industries. APL licenses its copyrighted works, such as the one in this case, to educational publishers, health care companies, and other medical institutions and businesses for use in connection with the study of biology and related fields. Leonard's images are often licensed by APL for use in pharmaceutical advertising.

4. APL's images are in high demand. Leonard's micrography of a bone marrow stem cell was featured on the cover of Time magazine's August 7, 2006 issue. Also that year, Leonard's image of a human embryonic stem cell was featured in Time Magazine as one of "Best Photos" of 2006.

5. APL's images are unique and scarce. Leonard is one of only a very few photographers who are capable of producing quality images of cells. Few if any photographers besides Leonard have successfully captured a quality image of a bone marrow stem cell.

6. Third-Party PREMIER PAIN CONSULTANTS, PLLC ("PPC") is a medical facility specializing in pain management.

7. Defendant GREENE TECHNOLOGIES, LLC ("Greene") is the owner and operator of certain domain names, websites and landing pages designed for pain management and chiropractic services in Bexar County, Texas. Upon information and belief, at all times relevant hereto, PPC operated the URLs located at www.painmanagementsanantonio.com and www.texaspainnetwork.net (the "Websites"). Greene licenses the Websites to companies like PPC.

8. APL alleges that Greene copied APL's copyrighted Work from the internet in order to advertise, market and promote its business activities. Greene committed the violations alleged in connection with Greene's business for purposes of advertising and promoting sales to the public in the course and scope of Greene's business.

JURISDICTION AND VENUE

9. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

10. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

11. Greene is subject to personal jurisdiction in Texas because Greene does business and provides services in Texas.

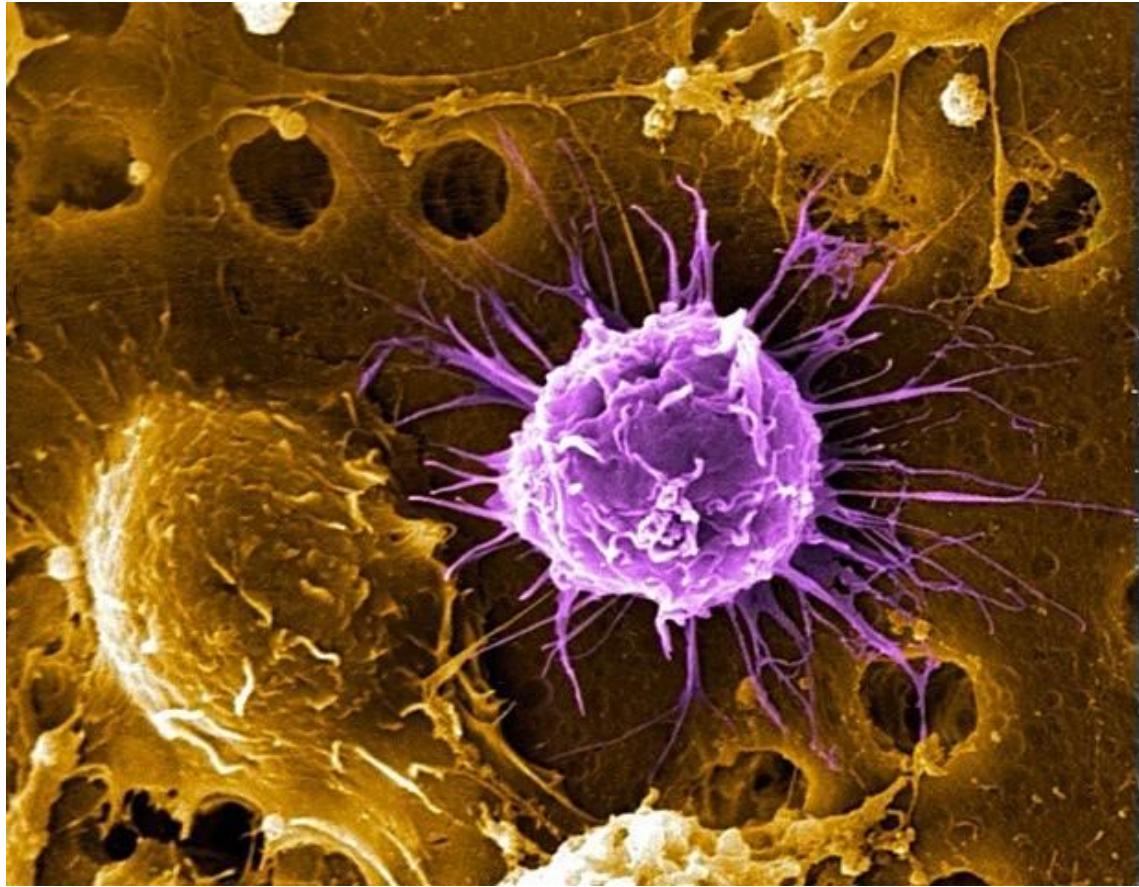
12. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Greene engaged in infringement in this district, Greene resides in this district, and Greene is subject to personal jurisdiction in this district.

DEFENDANT

13. Greene Technologies, LLC is an Arizona limited liability company with its principal place of business at 6042 East Brianna Road, Cave Creek, Arizona, 85331, and can be served by serving its Registered Agent, Mr. David Greene, at the same address.

THE COPYRIGHTED WORK AT ISSUE

14. In 1996, APL created a photograph entitled "Scanning electron Microscopy of Human Bone Marrow Stem Cells Image 4," which is shown below and referred to herein as the "Work".



15. APL registered the Work with the Register of Copyrights on December 20, 2007 and was assigned the registration number VA 1-426-177. The Certificate of Registration is attached hereto as Exhibit 1.

16. At all relevant times APL was the owner of the copyrighted Work at issue in this case.

INFRINGEMENT BY DEFENDANT

17. Greene has never been licensed to use the Work at issue in this action for any purpose.

18. On a date after the Work at issue in this action was created, but prior to the filing of this action, Greene copied the Work.

19. Greene copied APL's copyrighted Work without APL's permission.

20. After Greene copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of their pain management business and website management business.

21. Greene copied and distributed APL's copyrighted Work in connection with Greene business for purposes of advertising and promoting Greene's business, and in the course and scope of advertising and selling products and services.

22. APL's Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

23. Greene committed copyright infringement of the Work as evidenced by the documents attached hereto as Exhibit 2.

24. APL never gave Greene permission or authority to copy, distribute or display the Work at issue in this case.

25. APL notified Greene of the allegations set forth herein on July 9, 2019 but Greene has failed to respond to Plaintiff's Notice.

COUNT I
COPYRIGHT INFRINGEMENT

26. Plaintiff incorporates the allegations of paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. APL owns a valid copyright in the Work at issue in this case.

28. APL registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

29. Greene copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without APL's authorization in violation of 17 U.S.C. § 501.

30. Greene performed the acts alleged in the course and scope of its business activities.

31. Greene's acts were willful.

32. APL has been damaged.

33. The harm caused to APL has been irreparable.

WHEREFORE, the Plaintiff prays for judgment against the Defendant Greene Technologies, LLC that:

a. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. Defendant be required to pay Plaintiff its actual damages and Defendant's profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. § 504;

c. Plaintiff be awarded its attorneys' fees and costs of suit under the applicable statutes sued upon;

d. Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;

e. Plaintiff be awarded prejudgment interest; and

f. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: October 25, 2019

Respectfully submitted,

/s/ Joel B. Rothman
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